

# *Crown copyright: More than just an outdated provision*

ABC Copyright Conference

Saskatoon, May 30, 2019

Amanda Wakaruk, Copyright Librarian, University of Alberta



# What is Crown copyright?

*Copyright Act, s.12*

Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.

**“Crown copyright comes from and is justified by a particular non-democratic conception of government.” -- David Vaver**

<https://web.archive.org/web/20100527140536/http://www.lexum.umontreal.ca/conf/dac/en/vaver/vaver.html>



image courtesy of  
Kim Kemmer

# There is no justification for governments to hold copyright controls over government works

When talking to the intellectually curious/copyright-knowledgeable:

- Publicly distributed government works are true public goods: they are non-rivalrous (allow for simultaneous consumption) and nonexcludable (e.g., no-fee, free to access on the open web).
- When access and distribution is controlled with legal threat of infringement, the democratic deficit grows larger.

When talking to everyone else:

- Publicly distributed government works are paid for by Canadian residents and citizens and should be available to all for re-use and redistribution.
- When access and distribution is controlled by legal threat of infringement, one voice controls the narrative, enabling censorship.

# Concerned stakeholders ask for change, 1980-2018

- Canada. Minister of Communications and Minister of Consumer and Corporate Affairs. From Gutenberg to Telidon, A White Paper on Copyright: Proposals for the Revision of the Canadian Copyright Act. 1984. Excerpt relevant to Crown copyright: <https://drive.google.com/file/d/0B13VrrzqeRbuNG9KV0hBdGNIMTA/view>
- Canada. House of Commons Debates. Waddell, June 12, 1981, page 10545 and Kaplan, June 2, 1993, page 20215.
- Canada. House of Commons. Sub-Committee of the HC Standing Committee on Communications and Culture on the Revision of Copyright recommended that, "Crown copyright be abolished for some categories of materials and that the scope be greatly restricted for other categories." 1985.
- Canada. Industry Canada. Supporting culture and innovation: report on the provisions and operation of the Copyright Act. 2002. <http://publications.gc.ca/collections/Collection/lu4-19-2002E.pdf>
- Canadian Federation of Library Associations. Position Statement: Modernizing Crown Copyright. [http://cfla-fcab.ca/wp-content/uploads/2018/09/Doc12-CFLA-FCAB\\_statement\\_crown\\_copyright-Aug-1-2018-final.pdf](http://cfla-fcab.ca/wp-content/uploads/2018/09/Doc12-CFLA-FCAB_statement_crown_copyright-Aug-1-2018-final.pdf)
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- Torno, Barry. Crown Copyright in Canada: a Legacy of Confusion. Ottawa : Research and International Affairs Branch, Bureau of Intellectual Property, Consumer and Corporate Affairs Canada, c1981.
- Vaver, David. Copyright and the State in Canada and the United States. 1995. <https://web.archive.org/web/20100527140536/http://www.lexum.umontreal.ca/conf/dac/en/vaver/vaver.html>
- Wakaruk, Amanda. E-petition 1-1116, Copyright. <https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-1116>

**So what's the  
problem?**

**Problem 1:**  
**very few publications**  
**have been assigned**  
**an (imperfect) open**  
**government licence**



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of Canada

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**Notice:** As part of Canada's 2018-20 National Action Plan on Open Government, we will be hosting the [2019 Open Government Global Summit](#) in Ottawa from May 29-31

## Open Government Portal

Please note that the Open Information Portal contains a sample of government of Canada publications and information resources. For more resources, please visit [Government of Canada Publications](#) and [Library and Archives Canada](#).

### Search Records

Search...



682 records found

Order by Relevance ▾

Suggest a Dataset

### Search Filters [Clear All](#)

#### Portal Type

- ☐ Open Data (81862)
- ☒ Open Information (682)
- ☒ Clear All

#### Collection Type

- ☐ Ministerial Transition Binders (1)
- ☐ Publications (678)
- ☐ Reports Tabled in Parliament (3)

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means the natural or legal person, or body of persons corporate or incorporate, acquiring rights under this licence.

## Open Definition

[The Definition](#)[Conformant Licenses](#)[Participate](#)[News](#)

# Open Government Data and Content

Open government data and content is material that is:

- "Open" as defined by this site's [Open Definition](#)– in essence material (data) is open if it can be freely used, reused and redistributed by anyone.
- Produced or commissioned by government or government controlled entities.

## More information

- [Open Government Data website](#)
- [Open Knowledge Foundation Working Group on Open Government Data](#)
- [Open Government \(open-government\) mailing list](#)

### THE OPEN DEFINITION IN YOUR LANGUAGE

العربية | Беларуская | Български | Català  
| Czech | Dansk | Deutsch | Eesti |  
Ελληνικά | English | Español | Euskara |  
Suomi | Français | Galego | עברית | हिन्दी |  
Croatian | Magyar | Bahasa Indonesia |  
Íslenska | Italiano | 日本語 | ಕನ್ನಡ | 한국어  
| македонски јазик | नेपाली | Norsk  
(bokmål) | Poliszczyna | Português  
Brasileiro | Português | Русский | Shqip |  
Српски | Svenska | తెలుగు | Türkçe |  
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**Problem 2a:**  
**(web) terms of use**  
**create a disincentive**  
**for reuse and exclude**  
**stewardship activities**

**Problem 2b:**  
**terms of use are**  
**inconsistently applied**  
**and interpreted**

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**Problem 3:**  
**lack of guidance for**  
**making legacy**  
**materials available**



**THE BIG PROBLEM:**  
**problems 1 - 3 result**  
**in the loss of culturally**  
**valuable works**

# Web Renewal Action Plan



The screenshot shows the Treasury Board of Canada Secretariat website. The header features the Canadian flag and the text "Treasury Board of Canada Secretariat" and "Canada". A search bar is located on the right. The main navigation menu includes "Departmental Activities", "Policy Suite", "Information for", and "Resource Centre". The breadcrumb trail reads: "Home > TB Policy Suite > Web Standards > Web Usability > Reduce Redundant, Outdated and Trivial Content". The left sidebar contains a "Web Standards" section with links to "Web Accessibility", "Web Usability", "Web Interoperability", "Mobile Optimization", and "Web Communities". The "Web Usability" section is expanded, showing the current page. The main content area is titled "Reduce Redundant, Outdated and Trivial Content" and contains the following text:

Government of Canada websites should deliver easy-to-find, clear, accurate, up-to-date information to their visitors. To make government information easy to find and use, government departments need to be aware of the information published online and ensure quality information is delivered, evaluated and reviewed regularly.

The key steps in managing an effective content lifecycle are outlined below.

The benefits of removing Web content that has become redundant, outdated or trivial (ROT) include:

- Increased ease of finding and using Web content
- A better experience for visitors
- Decreased website maintenance costs
- Enhanced ability to deliver services online

thus improve services by saving clients time and effort.

A vertical link "Show table of contents" is located on the right side of the page.



# Summary of problems:

- 1) OGL is not broadly assigned across all government agencies
- 2) Attempts to implement govt-wide terms of use have created barriers to use, reducing access to and the visibility and impact of govt works
- 3) Government does not appear to be interested in managing copyright



**So what's  
happening?**

# Advocacy efforts, 2018 *Copyright Act* Review



## E-petitions

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An email address associated with the Government of Canada or the Parliament of Canada

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## E-1116 (COPYRIGHT)

42ND PARLIAMENT

Initiated by Amanda Wakaruk from Edmonton, Alberta, on May 26, 2017

keywords Crown copyright Public works Video recordings

Government Response Tabled

### Petition details

### Member of Parliament

### Government response

Petition presented to the House of Commons on October 20, 2017

Government response tabled on December 4, 2017 (Sessional Paper)

- 421-01734\_ISED\_E.pdf
- 421-01734\_PCH\_E.pdf

### History

Open for signature : May 26, 2017, at 3:19 p.m. (EDT)

Closed for signature : September 23, 2017, at 3:19 p.m. (EDT)

Signatures (1481)

Whereas:



- Canadians' right to use works produced by the government is unduly restricted by our outdated system of Crown copyright;
- Access to government information and the ability to distribute and encourage its re-use is of fundamental importance to a democratic society (see SI/97-5);
- The government is committed to open government principles;
- The government states that exploitation of IP contributes to economic growth and is best achieved outside government (TBS Policy on Title to IP Arising Under Crown Procurement);
- Library projects to preserve and provide access to government works have been delayed or prevented due to confusion over Crown copyright;
- Interpretations of existing government terms of use and licences by government employees are inconsistent and confusing, especially since closure of Crown Copyright Licensing program in 2013;
- Objectives of copyright law do not apply to publicly disseminated government works given that they are created by the government for public benefit (SCC in *Théberge v. Galerie...* and *CCH v. LSUC* state law's objective is to balance rewarding of creators with disseminating of works in order to benefit society);
- The government rarely pursues infringement claims (e.g., Sess. paper 8555-412-57, Dec 4, 2013, HC);
- Not all government works are intended for broad dissemination;
- Some works published by the government are authored or prepared by third parties; and
- SI/97-5 is limited to federally-constituted courts and administrative tribunals.

We, the undersigned, **citizens (or residents) of Canada**, call upon the **House of Commons** to to add Section 12.1 to the Copyright Act:


12.1 Works noted in section 12 are no longer protected by copyright upon being made available to the public.

## REPLY

The Government would like to thank the petitioners for expressing their concerns regarding Canadians' ability to use works produced by the Government.



The Government is aware of the impact that Crown copyright can have on how these materials are used. Crown copyright applies to a wide range of government agencies with various mandates, some of which rely on cost recovery to finance the production of information and content. The current practice gives flexibility to different governmental branches and agencies to adopt the most appropriate way to handle the content they produce or publish. Given this context, crown copyright is a complex issue, and it is important to strike a proper balance between addressing the needs of Canadians to access information and other public interest considerations, such as ensuring the quality and accuracy of government information.




The Government is committed to Open Government. As a member of the Open Government Partnership steering committee, Canada has taken a leadership role in the global movement to improve transparency and accountability. Canada is a global leader in the publication and use of Open Data, and is currently ranked #2 globally in the World Wide Web Foundation's Open Data Barometer. Also, with the Open by Default pilot, the government increases transparency by making available documents from specific departments to public researchers, businesses and

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engaged citizens to strengthen partnerships and supports the pursuit of common goals with interested stakeholders in civil society.

Canada's Copyright Act includes a requirement that Parliament review the legislation every five years. The first review is expected to begin in late 2017 or early 2018. This will provide parliamentarians with an opportunity to consider the current copyright framework, including provisions related to Crown copyright.



# Advocacy efforts, 2018 *Copyright Act* Review

*Written briefs requesting review or removal of Crown copyright for publications\**

<https://www.ourcommons.ca/Committees/en/INDU/StudyActivity?studyActivityId=9897131>

- Campus Stores Canada
- Canadian Council of Archives (CCA)
- Canadian Association of Research Libraries (CARL)
- Canadian Association of University Teachers (CAUT)
- Canadian Federation of Library Associations (CFLA) ([Position Statement: Modernizing Crown C, 08/18](#))
- Council of Atlantic University Libraries
- Council of Post Secondary Library Directors BC
- Creative Commons Canada
- Dalhousie Faculty Association
- Langara College
- Library Association of Alberta
- Macewan University
- Maple Ridge Family History Group
- Meera Nair
- Mount Royal University
- Southern Alberta Institute of Technology
- University of Alberta
- University of Alberta Library and Information Studies Students
- Amanda Wakaruk

\*CANLII and CALL briefs only addressed legal materials

# Advocacy efforts, 2018 *Copyright Act* Review

## *Oral testimony requesting review or removal of Crown copyright*

April 17, 2018: **Canadian Association of University Teachers**

Questions from MP Terry Sheehan and MP David de Burgh Graham, with responses from Charlotte Kiddell and Paul Jones  
<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-101/evidence>

April 24, 2018: **Canadian Association of Research Libraries** <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-102/evidence>

April 26, 2018: **Canadian Federation of Library Associations** <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-103/evidence>

May 9, 2019: **Dr. Jean Dryden** (open mic) <http://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-111/evidence>

May 10, 2018: **Brianne Selman** (open mic) <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-113/evidence>

May 11, 2018: **Canadian Association of Law Libraries**

Question from MP Terry Sheehan with response from Kim Nayyer <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-114/evidence>

May 11, 2018: **Susan Paterson** (open mic) <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-115/evidence>

May 29, 2018: **Wikimedia Canada**

Questions from MP Frank Baylis and MP Maxime Bernier, with responses from Jean-Philippe Béland  
<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-118/evidence>

# Advocacy efforts, 2018 *Copyright Act* Review

## *Oral testimony requesting review or removal of Crown copyright*

May 31, 2018: **Canadian Council of Archives**

Questions from MP Frank Baylis, MP David de Burgh Graham, and MP Mary Ng, with responses from Nancy Marrelli

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-119/evidence>

October 3, 2018: Question from MP Dan Albas, with response from Paul Gagnon

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-130/evidence>

October 29, 2018: **Creative Commons Canada and Open Media**

Questions from MP David de Burgh Graham, with responses from Kelsey Merkley and Laura Tribe

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-134/evidence>

November 28, 2018: Question from MP Dan Albas, with response from Jeremy de Beer

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-140/evidence>

December 10, 2018: **Dr. Michael Geist**

Questions from MP Dane Lloyd, MP Brian Masse, and MP David de Burgh, with responses from Michael Geist, Bob Tarantino, Casey Chisick, and Ysolde Gendreau <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-143/evidence>

December 12, 2018: **Dr. Meera Nair**

<http://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-144/evidence>

“Canada should reform Crown copyright regime, because all Canadians should have the right to access and reuse, without restriction, work produced by their government. Canada should place these materials directly into the public domain at the time of publishing.”

CC Canada to House of Commons Industry Committee, Oct 29, 2018





“Make articles that are produced by the Canadian government publicly available immediately on publication, either through a Creative Commons licence or releasing it to a public domain.”

CC Canada responds to questions posed by MP Masse about non-regulatory changes,, House of Commons Industry Committee, Oct 29, 2018





## BILL C-440

An Act to amend the Copyright Act (Crown copyright)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. C-42

### Copyright Act

**1 Section 12 of the *Copyright Act* is replaced by the following:**

#### No copyright — Her Majesty

**12** Without prejudice to any rights or privileges of the Crown, no copyright subsists in any work which has been, prepared or published by or under the direction or control of Her Majesty or any government department.

### Transitional Provision

#### Copyright ceases to subsist

**2** Without prejudice to any rights or privileges of the Crown, any copyright subsisting in any work referred to in section 12 of the *Copyright Act*, as it read immediately before the day on which this Act comes into force, ceases to subsist as of the day of that coming into force.

## BILL C-442

An Act to amend the Copyright Act

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. C-42;  
R.S., c. 10  
(1st Supp.),  
cc. 1, 41 (3rd  
Supp.), c. 10  
(4th Supp.);  
1988, c. 65;  
1990, c. 37;  
1992, c. 1;  
1993, c. 23

**1.** Section 12 of the *Copyright Act* is replaced by the following: no copyright subsists in any work referred to in section 12 of the *Copyright Act*, as it read immediately before the day on which this Act comes into force.

No copyright  
for Her Majesty

**12.** No copyright shall subsist in any work which is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department.

Coming into  
force

**2.** This Act shall come into force on January 1, 1994.

## NDP MP Brian Masse Outlines Proposal to Modernize Crown Copyright Laws



English

Français

Floor

Wide Player

### HEADLINE POLITICS

## NDP MP Brian Masse Outlines Proposal to Modernize Crown Copyright Laws

New Democrat MP and innovation critic Brian Masse holds a news conference on Parliament Hill to discuss his private member's bill that aims to make almost all government documents and publications public. Masse tabled Bill C-440 the day before his news conference. He is joined by Amanda Wakaruk (copyright librarian, University of Alberta), Katherine McColgan (executive director, Canadian Federation of Library Associations), and Julie Morin (project officer, Canadian Association of Research Libraries). (April 10, 2019) (no interpretation)

## POLITICS

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### OPINIONS

## Government should do the right thing and end Crown copyright

By Alan Freeman. Published on Apr 26, 2019 11:55am

*"Called a 'legislative monstrosity' by some legal scholars for being both overly broad and vague in its drafting, Crown copyright continues to plague librarians, archivists and others to this day, making federal information less accessible and sometimes not accessible at all."*



# Timing...

- Industry Committee report with recommendations is being prepared. Release date unknown.
- Parliament 42:1 last sitting day is June 21, 2019.
- Federal election is October 21, 2019.



# What happens next?

- Industry Committee report will hopefully include recommendations related to Crown copyright.
- Stakeholders continue to communicate with government departments (transitional briefing binders are being prepared for new government).
- Impact of PMB C-440?
- Influence (if any) of SCC Keatley v Teranet?

<https://www.scc-csc.ca/case-dossier/info/sum-som-eng.aspx?cas=37863>

# Questions?

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**FixCrownCopyright.ca**



Courtesy of Kim Kemmer